

Atty. Dkt. No. 023340-0201

**REMARKS**

The present invention relates to an exercise suit which include a torso portion adapted to substantially cover the torso of the user. The torso portion of the exercise suit includes a manually adjustable tension device designed to ensure a tight fit of the suit over the abdominal region. The exercise suit also includes one or more flaps secured to a side of the torso portion of the suit, wherein each flap can be secured across at least a portion of the abdominal region of the user with a fastener.

By the present communication claims 1-19 are pending in this application. Claims 1, 6 and 18 have been amended and new claim 19 has been added. The present status of all claims in the application is provided in the Listing of Claims presented herein beginning on page 2 of this communication.

Claims 1, 6, and 18 have been amended to provide better understanding by the Examiner. Specifically, claims 1 and 18 have been amended to further include the feature that the exercise garment includes a manually adjustable tension control element. Support for this amendment is found in the specification at [0042] and Figs. 1-3. Support for new claim 19 is found in the specification at [0051] and Fig. 4. No new matter is added by these amendments.

**Rejection under 35 U.S.C. §102(b)****a) Rejection as Anticipated by Dicker et al. (U.S. Pat. No. 6,176,816)**

The rejection of claims 6-9, 12, 26 and 29 under 35 U.S.C. §102(b), as allegedly being anticipated by Dicker et al. (U.S. Patent No. 6,176,816), is respectfully traversed.

In order to anticipate a claim, a single prior art reference must provide each and every element set forth in the claim. *In re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). *See also*, MPEP §2131.

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Applicant's invention, as defined for example by claim 1, distinguishes over Dicker by requiring a manually adjustable tension control element, wherein the tension control element is located in the front of the exercise garment and extends from the upper abdominal region to the lower abdominal region. Dicker does not describe such an element. The Examiner suggests that Figs. 7 and 8 show an exercise suit with a corset arrangement, however these figures merely show an exercise suit with a small elastic panel. There is no disclosure in Dicker that the tension control element is manually adjustable, nor is there any disclosure that the tension control element extends from the upper abdominal region to the lower abdominal region of the user of the exercise suit. Because Dicker does not describe each element of independent claims 1 and 18, rejection is improper. Reconsideration and withdrawal of the rejection is respectfully requested.

**b) Rejection as Anticipated by Nadeau (U.S. Pat. No. 5,810,699)**

The rejection of claims 1-5, 9, 10 and 18 under 35 U.S.C. §102(b), as allegedly being anticipated by Nadeau et al. (U.S. Patent No. 5,810,699), is respectfully traversed.

Applicant's invention, as defined for example by claim 1, distinguishes over Nadeau by requiring a manually adjustable tension control element, wherein the tension control element is positioned in the front of the garment and extends from the upper abdominal region to the lower abdominal region. Nadeau does not disclose such an element. Nadeau describes a sleeveless exercise garment which includes a belt, wherein the belt is defined as being approximately 4 inches in width and worn over the user's waist and lower lumbar vertebra. See col. 4, lines 7-20 and Figs. 3-6. There is no disclosure that the belt extends from the upper abdominal region to the lower abdominal region. Therefore, Nadeau does not teach each element of Applicant's invention and rejection is improper. Reconsideration and withdrawal is respectfully requested.

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**Rejections under 35 U.S.C. §103(a)****a) Relevant Law**

To establish a *prima facie* case of obviousness, three criteria must be met; there must be some motivation or suggestion, either in the cited publications or in knowledge available to one skilled in the art, to modify or combine the cited publications; there must be a reasonable expectation of success in combining the publications to achieve the claimed invention; and the publications must teach or suggest all of the claim limitations. *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2142. In analyzing obviousness, the Court of Appeals for the Federal Circuit has repeatedly cautioned that:

[t]he factual inquiry... must be based upon objective evidence of record.... [T]he best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.... [P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.

*In re Sang-Su Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002) (internal citations omitted).

**b) Rejection Over Dicker in view of Fairweather (U.S. Pat. No. 5,033,117)**

The rejection of claim 13 under 35 U.S.C. §103(a), as allegedly being unpatentable over Dicker et al. in view of Fairweather (U.S. Pat. No. 5,033,117), is respectfully traversed.

Applicant's invention, as defined by claim 13, distinguishes over the combination of Dicker and Fairweather by requiring the feature of a manually adjustable tension control element in the front of the exercise suit that extends from the upper abdominal region to the lower abdominal region of the user. There is no teaching or suggestion in either Dicker or Fairweather of a manually adjustable tension control element, nor is there any teaching or suggestion that the tension control element extends from the upper abdominal region to the lower abdominal region of the user of the exercise suit. Dicker and Fairweather do not teach every element of the claim

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and rejection is therefore improper. Reconsideration and withdrawal of the rejection is respectfully requested.

**c) Rejection Over Dicker**

The rejection of claims 14-17 under 35 U.S.C. §103(a), as allegedly being unpatentable over Dicker et al., is respectfully traversed.

Applicant's invention, as defined by claims 14-17, distinguishes over Dicker in that the present invention requires the feature of a manually adjustable tension control element. As addressed above, Dicker does not include a teaching or suggestion that the tension control element is manually adjustable, nor does it include a teaching or suggestion that the tension control element extends from the upper abdominal region to the lower abdominal region of the user of the exercise suit. Dicker does not teach every element of the claim and rejection is therefore improper. Reconsideration and withdrawal of the rejection is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

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Respectfully submitted,

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